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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

IN RE: PG&E CORPORATION and)
PACIFIC GAS AND ELECTRIC)
COMPANY,)
)
Debtors.) NO. 19-05257 JD
)
)
)

San Francisco, California
Tuesday, September 10, 2019

TRANSCRIPT OF PROCEEDINGS

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Tuesday - September 10, 2019

10:02 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil 19-5257, In Re PG&E Corporation and Pacific Gas and Electric Company.

Do you want their appearances?

THE COURT: Yes.

THE CLERK: Okay. Counsel, I'm going to need for you to stand and make your appearances.

MR. ORSINI: Good morning, Your Honor. Kevin Orsini, Cravath, Swaine & Moore, on behalf of the debtors.

MR. ZUMBRO: Paul Zumbro, Cravath, Swaine & Moore, on behalf of the debtors. Good morning, Your Honor.

MR. KAROTKIN: Good morning, Your Honor. Steven Karotkin, Weil, Gotshal & Manges, on behalf of the debtors.

MR. GOREN: Good morning, Your Honor. Matthew Goren, Weil, Gotshal & Manges, on behalf of the debtors.

MR. JULIAN: Good morning, Your Honor. Robert Julian, Baker Hostetler, for the Official Committee of Tort Claimants.

MS. MORRIS: Good morning, Your Honor. Kimberly Morris of Baker Hostetler on behalf of the Official Committee of Tort Claimants.

MS. CABRASER: Good morning, Your Honor. Elizabeth Cabraser of Lief, Cabraser, Heimann & Bernstein for the Burnett and plaintiffs-creditors.

1 **MR. YANEZ:** Good morning, Your Honor. Antonio Yanez,
2 Willkie, Farr & Gallagher, on behalf of the *Ad Hoc* Group of
3 Subrogation Claim Holders.

4 **MR. McCALLEN:** Benjamin McCallen, Willkie, Farr &
5 Gallagher, also on behalf of the *Ad Hoc* Group Of Subrogation
6 Claim Holders.

7 **THE COURT:** All right. Welcome, everyone. I'm
8 looking forward to working with you on this.

9 We'll just make our appearances. I'm here and Magistrate
10 Judge Kim is here also so you will perhaps see her again in
11 another context.

12 Okay. Who's going to take the lead, speaking leads?

13 **MR. ORSINI:** Your Honor, Kevin Orsini. I will for the
14 debtors.

15 **THE COURT:** Come on up.

16 **MR. JULIAN:** Robert Julian for the tort claimants,
17 Your Honor.

18 **THE COURT:** Okay.

19 **MR. YANEZ:** And, Your Honor, Antonio Yanez on behalf
20 of the subrogation group.

21 **THE COURT:** All right. Mr. Julian, why don't you join
22 us up here.

23 **THE CLERK:** You need to come to the podium.

24 **THE COURT:** Now, I have read with great interest
25 everyone's filings, as well as a number of other materials and

1 what I could find on 502(c) proceedings, which is not long or
2 deep.

3 Now, here's what I've taken away, and let me just tell you
4 what I want to accomplish this morning is setting our agenda
5 for the next several months on what we're going to do
6 culminating in a hearing of some sort, but to set the
7 parameters for that.

8 We have a clear mandate -- I have a clear mandate under
9 Section 502(c) to do two things: An estimate, not a
10 case-by-case adjudication of claims but an overall estimate, to
11 be done without undue delay and, as some of the case law says,
12 in a speedy fashion.

13 So those are the polestars that I am sailing towards with
14 your help, and I will just tell you what I'm thinking so far.
15 When I read everybody's submissions and I saw references to six
16 weeks of hearings in the first or second quarter of next year,
17 I concluded that that is not serving either the purpose of an
18 estimate or speed.

19 So what I'd like to do first -- and there will be a number
20 of things we'll cover, but this will be at least a door to walk
21 through to get us started -- what exactly are you-all
22 envisioning will happen at these multiple weeks of hearings?
23 It just wasn't clear to me. Who are the witnesses going to be?
24 What are the issues going to be? What are the legal and
25 factual points that are going to be raised?

1 I'll just tell you, you know, on the one hand, we're
2 clearly not doing individual claims. First of all, I have no
3 authority to bind anybody -- that's for others -- and, two, it
4 would take five years of -- every day for five years to get
5 that done. So that's not what we're doing.

6 On the other hand, I'm not just going to pull a number out
7 of my head and say, "Here's the estimate," although it does
8 seem technically okay under 502(c) for me to do that. We're
9 not going to do that so don't worry about that.

10 So I can't tell what the middle ground is going to be and
11 what you-all want to do at these hearings. So who would like
12 to start?

13 **MR. ORSINI:** I'm happy to begin, Your Honor, for the
14 debtors.

15 **THE COURT:** Okay.

16 **MR. ORSINI:** From our perspective -- again for the
17 record --

18 **THE COURT:** You just have to keep reminding me who you
19 are.

20 **MR. ORSINI:** -- Kevin Orsini from Cravath, Swaine &
21 Moore on behalf of the debtors.

22 **THE COURT:** The debtors.

23 **MR. ORSINI:** Yes, Your Honor.

24 So, Your Honor, I think you have it absolutely right at
25 the outset, which is we're not adjudicating claim by claim. We

1 can't do that. That's why estimation is necessary.

2 The overarching goal here has to be to do it quickly and
3 efficiently, both because that's what the Bankruptcy Code says
4 and that's what AB1054 requires for the debtors to be able to
5 merge by June of next year.

6 From our perspective at the highest of levels, when we get
7 to the actual estimation hearing -- and one point I'll make
8 right at the outset, Your Honor, is from the debtors'
9 perspective, we believe that at this point this court,
10 Your Honor and the district court, will be responsible for
11 estimating all of the claims whether they're core or noncore
12 claims.

13 That was our understanding of Judge Montali's expectation.
14 If that's not your understanding, we can discuss that, but --

15 **THE COURT:** Well, yeah. So, you know, I'm not a
16 bankruptcy judge so let me put it my way. So that's personal
17 injury and property damage --

18 **MR. ORSINI:** Everything.

19 **THE COURT:** -- is that what you're saying?

20 **MR. ORSINI:** Exactly, Your Honor.

21 **THE COURT:** Okay. That was my understanding, that
22 everything is going to be done here. Any issue with that,
23 Mr. Julian?

24 **MR. JULIAN:** It didn't start off that way, but that's
25 the way it is today, Your Honor, yes.

1 **THE COURT:** And you're okay with that?

2 **MR. JULIAN:** Yes, sir.

3 **THE COURT:** And everybody's okay with that? There's
4 nobody up here who has a problem with it at counsel table?

5 **MR. YANEZ:** No, Your Honor.

6 **THE COURT:** No? Okay. Good.

7 Yes. Okay. Good. All right.

8 **MR. ORSINI:** Okay. So with that preliminary out of
9 the way, what do you actually have to address at an estimation
10 hearing? Because I think that informs what you need to hear in
11 order to address it.

12 From our perspective there are two macro questions:
13 There's the liability question and there's the damages
14 question. And as the estimation case law makes clear and as
15 Your Honor just put it, I think, on the first piece, the
16 liability question, you're not ultimately reaching a final
17 resolution on any of these claims. You're not liquidating
18 them. You're not finally determining them. It's really more
19 of a question from your judicial experience, from the evidence
20 that's presented to the Court, and I'll get to how we envision
21 presenting that in a moment, but what do you believe the
22 likelihood is that these claimants, who have tens of thousands
23 of wildfire claims, could prove liability against PG&E?

24 And the second big piece of that, and then I'll return to
25 liability, but the second big piece of it is: Okay, once we've

1 assessed what the likelihood of success is on the underlying
2 claims -- it could be zero, it could be 100, it could candidly
3 be any number in between -- there's then the question of what
4 are the ultimate damages.

5 And so the Court is going to have to take a look at the
6 pools of claimants who have submitted claims in this
7 bankruptcy -- they will have done so by October 21st, which is
8 the bar date for all claims -- and assess based upon not claim
9 by claim by claim but based upon expert testimony, sampling,
10 things of that nature, what is the total size of the potential
11 damages. And let's just pick a fire. There are many fires
12 here but Camp fire, for example, the 2018 fire.

13 **THE COURT:** Well, you picked a number last night,
14 didn't you? You told the district -- you told the bankruptcy
15 judge approximately 17 billion.

16 **MR. ORSINI:** Approximately 17.9 billion I think it
17 was, yes.

18 **THE COURT:** Okay. You've already set a floor.

19 **MR. ORSINI:** That is the number up to which the plan
20 will be funded at this point, subject of course to estimation.
21 And one of the biggest disputed issues in these cases has been
22 what that number is. We have very dramatically different views
23 as to what that number is, and that's going to be the second
24 piece of the estimation proceeding, the damages piece.

25 **THE COURT:** By the way, so I haven't had a chance to

1 read that yet, but does that 17 billion roughly include the
2 Tubbs litigation?

3 **MR. ORSINI:** So it would involve resolving all of the
4 wildfire claims including Tubbs, Your Honor.

5 And the way it's broken out, Your Honor, is we've set up a
6 trust cap of approximately \$8.5 billion -- not approximately,
7 exactly \$8.5 billion for the subrogated claims, the insurance
8 claims.

9 There is a billion-dollar settlement that we have reached
10 with a series of the public entities. We reached that a few
11 months ago, including the town of Paradise, the County of
12 Butte, the town of Santa Rosa, various others.

13 So you have the 8.5 for the subrogation plaintiffs, you
14 have the billion dollars for the public entities, and then
15 there's \$8.4 billion for all the other wildfire claims, which
16 are predominantly the individual victims either for their
17 uninsured claims or uninsurable claims.

18 So with respect to the liability issue, there are a whole
19 host of different causes of action asserted here, but it really
20 at its core comes down to two questions: Whether inverse
21 condemnation applies, which is the strict liability standard
22 that I'm sure Your Honor has heard a lot about already; and
23 then there is the question of potential negligence. And the
24 Court is ultimately going to have to reach both issues in the
25 event that Judge Montali does not rule in my favor on the one

1 issue that he's reserved, which is whether inverse even applies
2 to an investor-owned utility such as PG&E.

3 But putting that issue aside, the reason why the Court is
4 going to have to reach both issues is because let's assume
5 inverse condemnation Judge Montali rules does apply to PG&E.
6 That's a strict liability standard. There will be some factual
7 questions with respect to certain fires as to whether or not
8 inverse applies; but let's assume for the moment for the
9 purposes of this discussion you conclude for the Atlas fire
10 inverse condemnation does apply. Then you're going to have to
11 decide -- you're still going to have to decide the negligence
12 question.

13 Why? There are different categories of damages that are
14 available under negligence causes of action as opposed to the
15 inverse condemnation costs. Inverse is property damage.
16 Negligence brings in everything else.

17 And so for each of these significant fires, when the Court
18 is addressing the first critical question, which is likelihood
19 of liability, there's going to ultimately be the question of:
20 Did PG&E start the fire? And as I'm sure the Court has seen
21 for the purposes of these proceedings, other than with respect
22 to Tubbs, we have said we will not contest causation. So that
23 fundamental threshold issue we've taken off the table for the
24 purposes of trying to get through these proceedings quickly.

25 But even if we assume, based upon that, that for -- I'll

1 stick with the Atlas fire -- that we did cause the fire in the
2 way Cal Fire has reported, which is a tree broke in the wind,
3 fell over, and hit a power line, started a fire -- okay --
4 inverse condemnation in that circumstance will likely apply
5 depending upon what Judge Montali rules on the threshold
6 question; but the negligence question will involve an analysis
7 of: What was the condition of that tree? Was that the type of
8 tree that a reasonable utility should have seen and should have
9 cut down?

10 So there will be systemic questions about how PG&E goes
11 about vegetation management, whether it dedicates enough
12 resources, whether it's following the right standards, whether
13 it's training people appropriately. That's the systemic
14 question but on any individual fire, of course, there has to be
15 this proximate causation. Even if the argument is the system
16 was flawed, you'd have to show that a reasonable system would
17 have caught that tree.

18 And so each fire will present different facts, and this is
19 an issue that's come up in the state court system so --

20 **THE COURT:** It just seem too granular to me. That
21 seems antithetical to the goals to 502(c).

22 All right. So there are two legal issues: Are you on the
23 hook under inverse condemnation and negligence? Maybe mixed
24 questions of law and fact, but the law part to me -- let me
25 just think out loud.

1 **MR. ORSINI:** Sure.

2 **THE COURT:** We're talking among friends.

3 The legal portion is: Would a California state court
4 recognize that as a cause of action under California law? And
5 it seems to me that's a readily and quickly answerable
6 question. Probably yes. So -- unless -- you know, who knows?
7 Maybe there's some legal reason why that's not the case, but
8 that seems quite ascertainable by relatively focused and short
9 case analysis.

10 And the next question is: All right. Do your fact
11 patterns -- fact patterns -- fall into the zone of potential
12 liability?

13 I'm estimating so all I'm doing is figuring out: Is there
14 a cause of action? Are there enough facts for that cause of
15 action to go forward? If so, how many people would be covered
16 by this claim?

17 **MR. ORSINI:** I think it's --

18 **THE COURT:** I think it's a higher level inquiry than
19 what I hear you suggesting. Maybe you're not suggesting it
20 isn't, but --

21 **MR. ORSINI:** So I think it's a little bit more than
22 what Your Honor just described, respectfully. I think it's not
23 just simply do the facts fall within the range of whether or
24 not they might have a cause of action. There's then the
25 separate question of: What's the likelihood based on those

1 facts that they would actually prevail?

2 It's not like a motion-to-dismiss standard where, you
3 know, under no set of facts that have been alleged could they
4 possibly prevail, so we're going to kick the case out. It's
5 instead a question of: Under these circumstances for in
6 particular the significant fires, is that the type of case that
7 has an 80 percent chance of winning in the state court system
8 or a 20 percent chance of winning? And that's going to include
9 some level of fact-specific inquiry on at least the major
10 fires.

11 Now, I agree with Your Honor, we cannot possibly do that
12 for all 21 or 22 significant fires. It's just not feasible.
13 It's not consistent with 502. It's not something we can
14 possibly think of in the context of the time we have available
15 to us.

16 And so that's why our proposal is that we pick some of the
17 biggest fires. Now, the Tubbs fire is the biggest swing factor
18 here; and, as Your Honor knows, we have our views as to whether
19 or not that should be done here --

20 **THE COURT:** How is this being litigated in
21 Superior Court?

22 **MR. ORSINI:** The Bankruptcy Court has lifted the stay
23 so that that can be litigated in Superior Court. We would
24 respectfully ask for leave to file a motion to reinstate the
25 stay in front of Your Honor because we believe that sending it

1 to state court actually interferes with the goal of trying to
2 get to the end of this whole process.

3 And ultimately Judge Montali made the ruling that he
4 thought it should go to state court because it would help the
5 estimator, in his words. Your Honor is the estimator. In our
6 view, that ought to be a decision you make, but we can come
7 back to that.

8 But putting aside --

9 **THE COURT:** Well, let's just pause on that for a
10 minute.

11 Is anybody here involved in that case?

12 **MR. JULIAN:** Yes, Your Honor, the Tubbs --

13 **THE COURT:** Oh, okay.

14 **MR. JULIAN:** -- lead counsel are here.

15 **THE COURT:** Why don't you have one person from Tubbs
16 come on up.

17 **MR. JULIAN:** And, Your Honor, I do have some comments
18 on estimation.

19 **THE COURT:** Well, of course. I mean, you'll have
20 equal airtime.

21 **MR. JULIAN:** Mr. Pitre is the lead counsel of the
22 North Bay leadership, Your Honor.

23 **THE COURT:** Oh, okay.

24 **MR. PITRE:** Good morning, Your Honor. Frank Pitre,
25 Cotchett, Pitre & McCarthy, for lead counsel, along with

1 Mr. Kelly, who's also here for the North Bay fires.

2 **THE COURT:** All right.

3 **MR. PITRE:** We have a hearing set Monday for a
4 preference --

5 **THE COURT:** You're the lead team on the Tubbs fire?

6 **MR. PITRE:** Yes, Your Honor.

7 **THE COURT:** In San Francisco Superior?

8 **MR. PITRE:** Yes, Your Honor.

9 **THE COURT:** Okay. So what's happening? You have a
10 trial setting conference on Monday?

11 **MR. PITRE:** Yes, Your Honor. It's a motion for a
12 preference because the individuals qualify to have their case
13 tried within 120 days of the hearing, which is scheduled for
14 Monday.

15 **THE COURT:** And when are you -- I know this is hard to
16 predict, but when do you think you'll know about the preference
17 decision?

18 **MR. PITRE:** Monday.

19 **THE COURT:** Oh. A bench ruling. You'll know Monday?

20 **MR. PITRE:** Yes.

21 **THE COURT:** Okay.

22 All right. And if that's true, then you'll be in trial by
23 December, something like that?

24 **MR. PITRE:** End of December, early January.

25 **THE COURT:** And how long do you think the trial will

1 go?

2 **MR. PITRE:** Five to six weeks max.

3 **THE COURT:** So if everything goes as planned, and they
4 rarely do -- it's a live show -- but if things go as planned,
5 you expect to have a verdict by, say, the end of February at
6 the latest.

7 **MR. PITRE:** Mid-February to early February, but
8 mid-February to be safe.

9 **THE COURT:** Early to mid-February, okay.

10 All right. I'll just tell you I'm not really inclined to
11 stop that. They have their day in court. There's no reason
12 for me to interfere with that. There are concepts of comity in
13 federalism as well as bankruptcy, and my tradition is not to
14 interfere in state court proceedings unless there is a good
15 reason for it.

16 I don't see any reason why we need to brief it. I mean,
17 what would you say about Tubbs that would be likely to lead to
18 a different outcome?

19 **MR. ORSINI:** I understand your point about comity,
20 Your Honor, but I actually don't think this is a question of
21 interfering with the state court proceedings. The bankruptcy
22 statute by operation stays all state court proceedings. This
23 was actually an affirmative decision by the Bankruptcy Court to
24 lift that automatic presumptive standard.

25 **THE COURT:** No, I understand, but it's there now. Why

1 would I reach out and switch gears again?

2 **MR. ORSINI:** Because, Your Honor, we believe that
3 going down to a jury trial with an unrepresentative set of
4 plaintiffs on a schedule, which I think Mr. Pitre has set forth
5 is in the best of cases, a schedule which might not hold, they
6 are trying to try a case involving over 40 individual
7 plaintiffs, including the damages phase of that trial, that's
8 going to take some significant time.

9 And our concern is going down to try one set of claims
10 with an unrepresentative group of plaintiffs who they have hand
11 selected is ultimately not going to dispose of the liability
12 with respect to Tubbs. Far from it.

13 The Bankruptcy Court said it would finally adjudicate
14 those issues. No, it won't. That will be one resolution of
15 one jury trial. It will still be if we win, they will be right
16 back here in front of Your Honor explaining these are the five
17 reasons why you should not now estimate Tubbs at zero because
18 this jury instruction was wrong, this pretrial ruling was
19 wrong, this instruction prejudiced us.

20 And they're going to ask you to say, "Well, I have that
21 jury verdict, but I should ignore that jury verdict or I should
22 say that's an outlier. In fact, you'd probably win eight out
23 of the ten remaining ones." And that's going to require
24 Your Honor to understand what those issues were. It's going to
25 require you to understand the general facts related to Tubbs.

1 And if we lose, we'll likely be here arguing the same
2 things. Your Honor presides over jury trials, has tried jury
3 cases. You understand all the issues incumbent in potential
4 appeals and disagreements about how that's done.

5 From our perspective, sending one unrepresentative trial
6 out --

7 **THE COURT:** You know what the cardinal rule is. The
8 jury is always right. So what you're essentially describing is
9 the functional equivalent of a JMOL motion or a post-verdict
10 motion --

11 **MR. ORSINI:** Well --

12 **THE COURT:** -- and I would apply similar standards.
13 So I'm not terribly concerned about having to relitigate Tubbs
14 in its entirety. I think that's unlikely.

15 Here's what I would like to do. You should file something
16 with me on Monday or Tuesday as soon as you know what the
17 disposition of the preference question will be.

18 If preference is granted and the trial date is set on the
19 schedule that's been described, I will almost certainly not do
20 anything to derail that. If for some reason a preference isn't
21 granted or trial date is set much farther out than plaintiffs
22 are anticipating, I might take a look at it.

23 Either way, I do think the Tubbs valuation is a fair
24 valuation point for the estimate, and there may be some
25 discussion we have here; but if it's zero or 100 billion, I'll

1 take that into account. But I don't need much more than that
2 and I don't see any reason to rob the plaintiffs of their day
3 in court in state court, which they're certainly entitled to at
4 this stage.

5 So that's how I'm going to leave that. Okay?

6 **MR. PITRE:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 Okay. Mr. Julian can come back.

9 **MR. ORSINI:** So back to the other fires, Your Honor.

10 **THE COURT:** Yes.

11 **MR. ORSINI:** So as I was saying, there's literally no
12 way that we could together deal with that level of granularity
13 as to all the other fires. We just can't do it. I completely
14 agree with Your Honor.

15 **THE COURT:** Just tell me what you think will happen at
16 the hearing. How do you want to do the hearing?

17 **MR. ORSINI:** Here's how we'd like to do the hearing.
18 So what we have done is we have identified -- and I think we
19 actually agree on at least four of the six non-Tubbs fires --
20 we've identified the most significant non-Tubbs fires.

21 And I just want to be clear when I say "significant."
22 Obviously each fire is incredibly significant to anyone who
23 suffered a loss in connection with that fire; that is, that is
24 obviously true. I'm not trying to suggest otherwise. I'm
25 talking simply about how do we get to the best outcome for all

1 of this with a larger number.

2 **THE COURT:** I understand.

3 **MR. ORSINI:** And so that would require and suggest we
4 focus on the fires with the biggest number of claimants. The
5 Camp fire is a no-brainer. The Camp fire was the 2018 fire
6 that decimated the town of Paradise, tragically took over 80
7 lives. That is a fire that PG&E has admitted, not just in the
8 context of estimation but outside, that its transmission lines
9 sparked.

10 That fire involves very unique sets of issues as compared
11 to a lot of the other fires. That is a fire involving the
12 failure of a piece of equipment, a hook that broke on a tower.
13 And so there's going to be questions about the inspection
14 process, the construction process, the maintenance process
15 related to whether or not the failure of that hook constitutes
16 negligence in particular.

17 And so we think that fire has to be subject to a hearing
18 before this Court because it's, frankly, *sui generis* as
19 compared to any of the other fires we're talking about.

20 **THE COURT:** Okay. So that's maybe three days. A
21 couple of percipient witnesses and maybe an expert.

22 **MR. ORSINI:** That's exactly how we think about it,
23 Your Honor.

24 **THE COURT:** All right. So that leaves you five and a
25 half weeks left.

1 **MR. ORSINI:** So let me keep going down the list.

2 **THE COURT:** Okay. But, no, I mean, does that sound
3 about right, Mr. Julian? You haven't had a chance to say much
4 yet so far, but --

5 **MR. JULIAN:** Five or six days --

6 **THE COURT:** Okay.

7 **MR. JULIAN:** -- on liability, not on damages.

8 **THE COURT:** Five or six days on the hook?

9 **MR. JULIAN:** Your Honor, we just got their -- yeah.
10 They raised more issues than they're talking about, but if I
11 may address estimation overall --

12 **THE COURT:** Yes.

13 **MR. JULIAN:** -- in answering your question.

14 **THE COURT:** Let's just pause for a moment and let
15 him -- yes, go ahead.

16 **MR. JULIAN:** Sure. First of all, the cases they're
17 talking about, the principles they're talking about, apply when
18 one is estimating claims for determining how big of a claim you
19 have to vote in a bankruptcy case or whether the plan is
20 feasible.

21 We're here for a completely different reason, and there's
22 a different standard that applies to that. We're here by their
23 own admission to estimate how many claims will be allowed for
24 purposes of payment in a capped trust.

25 And the reason why I say there's a difference is because

1 when you're estimating -- when the Bankruptcy Court estimates
2 claims to determine a tort claim as for contract claimants --
3 contract claim or tort claim of a million dollars for purposes
4 of voting, if the judge is wrong, it doesn't matter because the
5 reorganized debtor comes out of bankruptcy and pays that claim
6 eventually whether it was \$500,000 or a million two.

7 When you're dealing with what they're trying to do here
8 and like what happens in a mass tort case, it's this: Their
9 plan essentially says that everyone in this case gets paid in
10 full except for the wildfire victims comprised of the insurers,
11 of some public entities, and the victims themselves. And the
12 victims are going to have to live with whatever money is put
13 into that trust, and the amount of money that's put into that
14 trust is determined by your determining the value of those
15 claims as determined in the tort system in two ways:
16 Settlements and jury trials.

17 So you're predicting what will happen in settlements
18 historically with PG&E and what would happen in the future in
19 jury trials. And here's the rub. And there are only two cases
20 that really talk about this, *Dow Corning* involving products
21 liability, and the *Archbishop of Portland* cases involving mass
22 tort sexual abuse cases involving emotional distress; and the
23 judges in those cases said, "You know, if we estimate and we're
24 wrong and the trust is capped and the money is put in based on
25 my estimate, the judge's estimate, and the tort victims later

1 have their jury trials, as they're entitled to because they're
2 personal injury claims, the later jury trials could turn out to
3 be establishing damages higher than the estimation did."

4 **THE COURT:** Let me -- yes, I fully embrace that. I
5 get it.

6 **MR. JULIAN:** Okay.

7 **THE COURT:** So, look, here are the two poles in my
8 view. Maybe I'm wrong, but here's how I'm thinking of it. On
9 the one hand is making sure that everyone who's injured will be
10 made whole. Okay?

11 **MR. JULIAN:** Yes, Your Honor.

12 **THE COURT:** On the other hand is the debtors' need to
13 have a number that they can plan with so that their plan of
14 reorganization can be approved. Something's happening at the
15 PUC. You know, there's a lot of downstream effects so you both
16 need an estimate of what the amount of money is going to be,
17 but the clear goal of estimation is to make sure nobody gets
18 stiffed at the end of it for legitimate claims. So I'm not
19 worried about that. I really want to focus on how we're going
20 to get there.

21 **MR. ORSINI:** Right, Your Honor.

22 **THE COURT:** And let me just jump-start it a little
23 bit. Okay?

24 We have ruled out, I believe -- I certainly have -- we're
25 not doing individualized claim hearings. That's just not

1 consistent at all with Section 502(c) or the amount of time we
2 have, and it's unrealistic and it doesn't matter anyway because
3 I can't bind anybody's hands. So we're not going to add up
4 each claim individually. That's an impossible task.

5 And I'm not -- as I said earlier, I'm not just going to
6 take 17 billion, multiply it by 2 and a half, and call it a
7 day, although I think in all seriousness I could do that, but
8 I'm not going to.

9 So what's the middle ground? I'm asking you for the
10 middle ground. I have come up with one and I'll just propose
11 it to you. One middle ground would be to -- if there are legal
12 issues on liability, we can address those. Those are, I think,
13 relatively straightforward as I suggested; but then past that,
14 what about something like this:

15 We have experts come in. I think this data is readily
16 available, maybe it's not; but I think someone could say --
17 someone has done, I'm sure, detailed studies about what an
18 average wrongful death claim or payout is in a fire situation
19 for various regions of the state or maybe California as a
20 whole.

21 I'm sure there's data what the average property damage
22 claim is for fire. Maybe it's by region in California or on
23 the state as a whole. And then we multiply that by the number
24 of people who realistically -- it's an estimate, it's not an
25 exact headcount and it's also not a guess, it's an estimate --

1 people who realistically have a claim.

2 And that seems to me to be a week, maybe eight-day
3 expert -- I would probably do something like, you know, I'm
4 fond of a procedure called "hot tubbing" where we just have the
5 experts come in, and I mediate the discussion and we quickly
6 establish common ground among the people who are best situated
7 to know.

8 I mean, isn't something like that --

9 **MR. JULIAN:** Yes, Your Honor, with one footnote.

10 **THE COURT:** Oh, so you agree.

11 **MR. JULIAN:** With one footnote.

12 **THE COURT:** Okay. I don't really do footnotes but go
13 ahead, yes.

14 **MR. JULIAN:** In 2015 there was the Butte fire. In
15 fact, they want to estimate the remaining Butte fire claims
16 that have not been paid. There's --

17 **THE COURT:** 2015, yes.

18 **MR. JULIAN:** 546 homes were destroyed, some couple
19 hundred other structures. They've paid out so far \$900 million
20 in settlements and they've booked 1.1 billion total for that.

21 And we have been asking for their documentation -- we just
22 got it -- because we believe that the average payout in that
23 case for the property damage, the personal injury damages of
24 people suffocating and fleeing the fire and getting burned and
25 fearing for their lives, and the lost profits for the

1 businesses and the lost use of the homes, I'm going through the
2 damages now -- the tree, the forestation -- serves as a good
3 estimate of the per structure and per person damages for this
4 case --

5 **THE COURT:** So --

6 **MR. JULIAN:** -- with one footnote.

7 **THE COURT:** -- it's a benchmark.

8 **MR. JULIAN:** Yes.

9 **THE COURT:** Yes, Butte is a benchmark.

10 **MR. JULIAN:** More importantly, and all the cases say
11 this, the debtors' historical settlement values are the most
12 important predictor of what they will settle these cases for or
13 what they will try them for in the tort system in the state
14 court, which is what we're here for.

15 The footnote is this: They contend -- and I'll give you
16 my response -- they contend, the debtor contends that because
17 the Butte fire involved a tree falling on the line and here we
18 have fires started by trees falling on lines, branches falling
19 on lines, fuses blowing up, and in Camp a hook, an old
20 antiquated hook falling apart after they knew it was going to
21 fall apart, that those negligence issues have to be wrapped
22 into the case.

23 And my response is this, and they don't like it, my
24 response is: If you look at the CPUC decisions and the
25 Cal Fire reports, you see a pattern of negligence in this case.

1 Indeed, Judge Alsup has commented on it numerous times.

2 And so what we want to do is show that the pattern of
3 negligence is systemic and they want to go fire by fire and
4 make us go fire by fire. It's a tension in this case. We have
5 to be prepared for the fact that you may let them do that, and
6 so we have just recently asked for the discovery of the
7 documents and the e-mails that show that on each equipment
8 there are problems.

9 **THE COURT:** Let me just stop you. We're going to
10 reason backwards from what the hearing will look like. That
11 will drive the discovery and that will drive the schedule. So
12 let's just talk about the hearing first because that will
13 define what's going to be relevant and not relevant.

14 Now, let's just build. All right. So the footnote to
15 what I said is a good one, Butte. Why don't we start with
16 Butte as a proxy. We're going to have to modify it there's no
17 doubt. Every fire is different and the geography, the
18 causation issues, whether there are contributing factors, I get
19 that.

20 **MR. JULIAN:** There's a second fire on damages that's
21 important. The San Bruno fire --

22 **THE COURT:** Let's just start with the concept of using
23 benchmarks. All right? That gives us a lot of good
24 information so we don't have to just start from zero. We don't
25 have time for that and it's not consistent with 502(c) if we

1 have this data that's out there in my view.

2 So let's build on the idea of a benchmark and then modify
3 it as you two will meet and confer. We're not deciding it now.
4 We're just scoping general parameters.

5 What I would probably do is have you two go out and
6 everyone else who wants to be involved and then have a detailed
7 proposal of what specifically the hearings will look like based
8 on that kind of information, maybe supplemented by experts who
9 would say "Here's some additional data points on what these
10 claims are like in fires generally" and, you know, we take it
11 from there.

12 And then if there are individual issues, "Well, we
13 shouldn't be responsible for this because we actually did
14 something that was consistent with good practice and this set
15 of claims is not reasonable." Of course, everybody will have
16 their day in court. Due process is our lodestar so no one is
17 going to get -- on either end no one is going to be, you know,
18 locked in a closet. Okay? They will be heard.

19 So how about that as just kind of a focusing idea?

20 **MR. ORSINI:** So a couple reactions, Your Honor.

21 **THE COURT:** Is it Mr. Orsini?

22 **MR. ORSINI:** Yes, Kevin Orsini for the debtors.

23 A couple reactions, Your Honor. I think what you
24 described is very consistent with what we were thinking about,
25 particularly for the damages piece. Sort of as I described it

1 before, there's liability and there's damages. We would fully
2 expect that this calculation of --

3 **THE COURT:** Well, I'm sorry. I hate to interrupt.
4 We're going to do this all at one time. We're not bifurcating
5 anything.

6 **MR. ORSINI:** That's fine. That's fine.

7 **THE COURT:** We're not bifurcating anything.

8 **MR. ORSINI:** That's fine.

9 **THE COURT:** It's a unitary proceeding.

10 **MR. ORSINI:** The question of what's the total size of
11 the damages pool before you start getting into questions about
12 are we actually liable for that, what's the likelihood of
13 liability, we agree it's going to be done almost certainly
14 100 percent by expert testimony using the types of analyses you
15 just described: Average cost of rebuild, average diminution
16 value of the structure. In fact, we've done a tremendous
17 amount of work on that.

18 **THE COURT:** Well, and what you-all have paid in the
19 past.

20 **MR. ORSINI:** What we have paid in the past with
21 respect to Butte, which is why we've agreed to produce that
22 information and we've now produced all that information.

23 But to your point, Your Honor, it was a different fire at
24 a different time. So it is a benchmark and the question will
25 be --

1 **THE COURT:** We're estimating. We're estimating.

2 **MR. ORSINI:** Right.

3 **THE COURT:** So benchmarks are good.

4 **MR. ORSINI:** I'm not suggesting they're not, but you
5 also need --

6 **THE COURT:** When you start saying things like it was a
7 different age and a different day, you know, I'm looking for
8 data points that I can use. Of course, that's obviously true,
9 but I'm looking for an estimate that can be done without, as
10 the statute says, undue delay.

11 **MR. ORSINI:** Completely agree with that, Your Honor,
12 which is why we've agreed to produce those materials. We would
13 fully expect it to be part of this. In fact, we believe that
14 it supports the numbers we already have in here.

15 **THE COURT:** Okay.

16 **MR. ORSINI:** My point is very simply that what the
17 experts will also have to address to help you in evaluating
18 that benchmark is what do the facts look like on the ground
19 generally speaking with respect to these fires; right?

20 And this is a discussion for another day, but there will
21 need to be some development of facts in terms of the losses
22 that have actually been suffered by the claimants in these
23 fires in order to support that analysis.

24 As I explained to Judge Montali, on the one end of the
25 spectrum is we could take discovery from every single fire

1 victim. That's never going to happen. We're not going to do
2 that. We're not going to ask for that.

3 On the other end of the spectrum we could understand
4 literally nothing about what the actual losses are associated
5 with any of the claims in these various fires. There's got to
6 be somewhere in the middle. It's probably, frankly, closer to
7 the left side than it is to the right -- which is going to be
8 hard on the transcript, I apologize -- but the basic point
9 being we will need to do some development of real facts to
10 assist the Court in looking at those benchmarks as to what the
11 actual losses have been suffered in connection with these
12 fires. That's my only point.

13 **THE COURT:** Yes. Okay.

14 Before we do that, Mr. Julian, anything else to add?
15 Because I'm going to give you your assignments now, but go
16 ahead, Mr. Julian.

17 **MR. JULIAN:** The only other thing is, I don't know if
18 you want Magistrate Kim or Judge Montali to do this, but the
19 San Bruno fire killed many people and the wrongful death
20 damages that they paid in that case are very similar to Butte,
21 and we've got the Butte settlement history but we don't have
22 the -- I know you don't want to get into discovery today
23 probably, but --

24 **THE COURT:** Oh, no, we are.

25 **MR. JULIAN:** We need the San --

1 **THE COURT:** I said we were going to do it backwards.

2 **MR. JULIAN:** We need the San Bruno conflagration that
3 is before Judge Alsup, the wrongful death damages and property
4 damage settlements in there, because the wrongful death are
5 very similar to the death damages that we're seeking in this
6 case.

7 **MR. ORSINI:** Your Honor, if I may briefly on that
8 point.

9 **THE COURT:** Yes.

10 **MR. ORSINI:** That's already been litigated and decided
11 by Judge Montali. They sought that discovery in front of
12 Judge Montali. He said that they were not entitled to that
13 discovery.

14 **MR. JULIAN:** I disagree.

15 **MR. ORSINI:** If we're going to relitigate, we can, but
16 Judge Montali has already decided that issue.

17 **THE COURT:** Well, it's a new day so I need more
18 information about that.

19 But here's your task: So I think we all are on the same
20 page conceptually.

21 **MR. JULIAN:** We are, Your Honor.

22 **THE COURT:** Okay. So you two and whoever else on both
23 sides of the aisle, so to speak, want to participate,
24 everyone's invited, I'd like you to do this in a week -- if you
25 need more time, we can talk about that -- but a week from today

1 I want a specific proposal based on the idea of using estimates
2 that are derived from the benchmarks that we talked about
3 supplemented by experts with an eye towards, to the extent
4 either of you, either group, or any group believes the
5 benchmarks should be modified up or down or whatever direction,
6 someone to come in and say why.

7 But as a reasonable approximation, not as matters of
8 individualized proof. Just someone to come in and say: Okay.
9 Here's what happened in Butte -- maybe this is what PG&E's
10 expert would say -- but all of that has to be discounted by
11 30 percent because this next fire that we're looking at didn't
12 have these factors in it or the property values there were
13 consistently lower than they were in Butte County or whatever
14 else. You understand what I'm saying.

15 **MR. ORSINI:** Yes, Your Honor.

16 **THE COURT:** Okay. But that will give us at least a
17 focus and will streamline things considerably. So you two get
18 together and put that in specific detail. Okay?

19 Is a week going to be enough?

20 **MR. ORSINI:** I think you tell us it will be a week,
21 and we'll get it done in a week.

22 **MR. JULIAN:** If it were just Mr. Orsini and me, it
23 probably would, but we tend to have other committees and fire
24 victims and class action folks weighing in; and when Mr. Orsini
25 and I put together the joint statement, we needed more time.

1 **THE COURT:** You know, everybody should do it.

2 **MR. JULIAN:** I would say ten days to two weeks.

3 **THE COURT:** Two weeks?

4 **MR. ORSINI:** Two weeks. I would say ten days,
5 Your Honor.

6 **MR. JULIAN:** Ten days is fine.

7 **MR. ORSINI:** We need to get this process going.

8 **THE COURT:** Two weeks but you can beat the clock. So
9 if you get it done earlier, you can -- two weeks is an outer
10 boundary. Let's do that. Okay?

11 **MR. JULIAN:** Thank you, Your Honor.

12 **THE COURT:** Now, what would you like to do in the
13 meantime? Do you just want to wait until we get that done and
14 then decide discovery or what?

15 And, by the way, I think we can have the hearings -- I
16 would like to have the hearings in January at the latest. So
17 keep that in mind. I think if we get this streamlined in the
18 way that I think is appropriate, that should be absolutely no
19 problem. Okay?

20 So you should be targeting mid to late January for the
21 hearings. And I'll leave it up to you to decide how you want
22 to do it, but five weeks is not, in my view, consistent with
23 the spirit of 502(c). Maybe it is. We'll see. But it seems
24 to me that if we do the benchmarks the right way with experts
25 and maybe a little bit of factual data here and there, this can

1 be done in two or three weeks. Okay?

2 **MR. JULIAN:** Thank you, Your Honor.

3 **THE COURT:** All right. Now, anything else? Do you
4 want to just come back in two weeks or do you want to do
5 something?

6 **MR. JULIAN:** I think in the interim I'd like to talk
7 to our discovery team. I'll get to you the transcript of
8 Judge Montali's discussion on San Bruno because we think it's
9 important data, and we'll submit a letter brief to you as
10 appropriate.

11 **THE COURT:** Okay.

12 **MR. ORSINI:** Your Honor, if I may, just two additional
13 points.

14 **THE COURT:** Okay. Well, let's -- all right. So
15 you're the TCC; is that right, Mr. Julian?

16 **MR. JULIAN:** TCC.

17 **THE COURT:** Okay.

18 **MR. JULIAN:** For plaintiffs.

19 **THE COURT:** So the TCC is going to submit a discovery
20 proposal. You can respond let's say five days after they do
21 that. Okay?

22 **MR. ORSINI:** Okay.

23 **THE COURT:** All right.

24 Okay. Yes.

25 **MR. ORSINI:** First, I just want to clarify one thing

1 for the record, Your Honor, going back to the conversation we
2 had about the numbers that were in our plan.

3 Just to be very clear, that's not a floor on what we
4 perceive the liability to be; right? Those are set as caps on
5 what we believe the potential liability could be subject to
6 estimation, but we're certainly not conceding that that is the
7 magnitude of liability as to any of those classes except with
8 respect to, of course, the public entities with whom we've
9 settled.

10 **THE COURT:** Well, but you're saying it's at least that
11 much.

12 **MR. ORSINI:** No, we're not, Your Honor. We're not
13 saying it's at least that much. We've said that we will put
14 forth a plan that includes funding of up to that amount subject
15 to estimation. We believe that the actual liability numbers
16 may be significantly lower than that, and that ultimately is
17 going to be what Your Honor has to resolve at the estimation
18 hearings.

19 **MR. JULIAN:** And, Your Honor, I only know what they
20 put in their 10-Q, that it was -- they booked 14 billion
21 because it was a minimum and it could be over 30 billion, and
22 the document we filed with Dennis Montali had the number pegged
23 around 50 billion on the basis of the Butte settlement ratio
24 analysis, but that's for a discussion another day.

25 **THE COURT:** Okay. You had another point?

1 **MR. ORSINI:** I can raise it at the end, Your Honor.

2 **THE COURT:** All right. Anything else for today?

3 **MR. ORSINI:** No, subject to that one point.

4 **THE COURT:** All right. So it's going to be all on you
5 for two weeks.

6 **MR. JULIAN:** Yes, Your Honor.

7 **THE COURT:** I'll have you back two weeks from today.

8 **MR. JULIAN:** Yes, Your Honor.

9 **THE COURT:** So what you should probably do actually
10 is -- Lisa, what is two weeks from today?

11 (Courtroom deputy and the Court conferring.)

12 **MR. ORSINI:** Can I raise one scheduling issue,
13 Your Honor?

14 **THE COURT:** Well, I'm just trying to deal with mine
15 here.

16 (Pause in proceedings.)

17 **THE COURT:** You know, I am going to have you back,
18 this is a little bit less time, Mr. Julian, than you were
19 thinking, but I'm going to have you back on Friday,
20 September 19th.

21 Is that the 19th?

22 **THE CLERK:** Thursday is the 19th.

23 **THE COURT:** I'm sorry, the 20th. Friday,
24 September 20th.

25 **MR. JULIAN:** That's fine, Your Honor.

1 **THE COURT:** Okay.

2 **MR. ORSINI:** Your Honor --

3 **THE COURT:** Which means I need to get the plan from
4 you by --

5 (Courtroom deputy and the Court conferring.)

6 **THE COURT:** So Friday the 19th --

7 **THE CLERK:** Thursday is the 19th.

8 **THE COURT:** I'm sorry, Friday the 20th. And I need to
9 get your proposal, then, by no later than the -- let's say
10 5:00 o'clock on the 18th.

11 **MR. ORSINI:** If I may, Your Honor. I apologize.

12 **THE COURT:** Yes.

13 **MR. ORSINI:** I have a one-day trial in Delaware
14 Chancery Court on Friday the 20th of September that's been
15 scheduled for a few months now.

16 **THE COURT:** Is that likely to go?

17 **MR. ORSINI:** Yes. It's almost certain to go.

18 **THE COURT:** Okay. In that case, I cannot see you
19 until October 7th.

20 **THE CLERK:** That's a Monday.

21 **THE COURT:** Yes.

22 So that's going to give you plenty of time so it should be
23 perfect by the time I see it. Okay?

24 **MR. ORSINI:** If I'm wrong, Your Honor, about that
25 going, I can notify the Court as soon as it settles if it works

1 out.

2 **THE COURT:** Well, you two should just get started with
3 the idea that if the 20th gets continued or something, you can
4 come in on the 20th. Okay?

5 But otherwise I'll see you on Monday the 7th at
6 10:00 a.m., and get the plan in -- if it's going to be Monday
7 the 7th, just get it in by a week before then. Okay?

8 All right. And as this is going -- after that, I'm going
9 to start setting our dates and we'll define with specificity
10 what the scope of discovery will be at that point.

11 And you-all are looking at your experts. I mean, I think
12 you have a fair idea now so this is going to move -- consider
13 this effectively an expedited bench trial.

14 **MR. ORSINI:** Absolutely.

15 **THE COURT:** So just make it happen.

16 **MR. JULIAN:** Yes.

17 **THE COURT:** Anything else for today?

18 **MR. ORSINI:** Your Honor, the one final point I've been
19 asked to raise, just for the sake of transparency, I understand
20 that Your Honor has personal knowledge, personal relationship
21 with one of our directors, Jeffrey Bleich, who I believe has
22 also been appointed by the Court as a special master.

23 **THE COURT:** Special master in my antitrust case.

24 **MR. ORSINI:** We do not believe that there's any issue
25 associated with that. We have no question about the Court's

1 impartiality. We just thought it would be important for us to
2 raise it.

3 **THE COURT:** All right. I agree.

4 **MR. JULIAN:** Thank you.

5 **THE COURT:** Anything else from anyone?

6 **MR. JULIAN:** No. I think we're fine.

7 **THE COURT:** Yes. Come on up.

8 **MR. PASCUZZI:** Thank you, Your Honor.

9 **THE COURT:** Yes.

10 **MR. PASCUZZI:** Paul Pascuzzi for the California state
11 agencies. My firm is co-counsel.

12 **THE COURT:** Oh, yes. Thank you. Yeah.

13 **MR. PASCUZZI:** And the attorney for the United States
14 is here as well.

15 **THE COURT:** Okay.

16 **MR. PASCUZZI:** Your Honor, we had put an insert into
17 the joint status conference statement and wanted to alert the
18 Court of one issue that the Bankruptcy Court was still going to
19 be dealing with with respect to the unique claims,
20 fire-suppression-type claims that are technically, quote, "fire
21 related" but they are very distinct from the tort victims
22 claims.

23 **THE COURT:** Your colleague can come on up.

24 So let me just cut to the chase. So you two want to be
25 exempted from -- the state agencies and the federal agencies

1 want to be out of this process. Is that what you're --

2 **MR. PASCUZZI:** Yes, Your Honor.

3 **THE COURT:** Okay.

4 **MR. PASCUZZI:** There's two bases.

5 **THE COURT:** Well, before -- I didn't get the sense
6 that the debtor disagreed with that.

7 **MR. ORSINI:** No, we do, Your Honor.

8 **THE COURT:** Oh.

9 **MR. ORSINI:** We don't agree with their analysis so
10 that is still an open issue.

11 **THE COURT:** Oh, you do? Oh.

12 **MR. ORSINI:** We were going to propose to brief --

13 **THE COURT:** I missed that.

14 **MR. ORSINI:** -- either to the Court or to the
15 Bankruptcy Court.

16 **THE COURT:** Oh, okay.

17 **MR. PASCUZZI:** Your Honor, Judge Montali at the last
18 hearing in the Bankruptcy Court said that he thought he could
19 decide whether our claims are liquidated or unliquidated. If
20 they are liquidated, then they are not subject to estimation
21 under 502(c). We believe substantially all of our claims will
22 be liquidated. They're not filed yet so it's hard to make that
23 determination. We're working closely to get them filed as soon
24 as possible, and then the Bankruptcy Court will decide that
25 according to what Judge Montali said at the last one.

1 **THE COURT:** Well, would you like Judge Montali to do
2 that?

3 **MR. PASCUZZI:** We would, Your Honor. I mean, he's
4 pretty -- he deals with liquidated/unliquidated issues all the
5 time. No disrespect.

6 **THE COURT:** Fine with me. So why don't you go do
7 that. And that will resolve the issue; right?

8 **MR. ORSINI:** It will, Your Honor.

9 **THE COURT:** Okay. So I don't have to --

10 **MR. PASCUZZI:** The second part of the issue,
11 Your Honor, is let's say there are some parts of the claims
12 that are unliquidated, they're very distinct from individual
13 tort victims' claims. And obviously those tort victims' claims
14 are very, very important and we're concerned about getting
15 caught up in, you know, the rumble for all of that and not
16 really being able to present our case on our important claims
17 as well.

18 So we're talking about fire suppression costs, we're
19 talking about environmental cleanup by the Department of Toxic
20 Substances Control, emergency services and disaster aid
21 provided by the Office of Emergency Services and the federal
22 agencies.

23 **THE COURT:** Yes, and Butte already settled; right?
24 Butte County?

25 **MR. PASCUZZI:** This is different.

1 **THE COURT:** No, no, I know, but that's the type of
2 claim that they -- damage to the city --

3 **MR. PASCUZZI:** I don't think it's similar types of
4 claims, Your Honor.

5 **THE COURT:** How long do you think Judge Montali will
6 need to -- have you moved already? Have you already asked him
7 to resolve this?

8 **MR. PASCUZZI:** He said he would resolve it, but the
9 claims need to be filed first and the bar date is October 21st,
10 and we're trying to get our claims in as soon as we can.

11 **THE COURT:** Oh, a month away --

12 **MR. PASCUZZI:** Yes.

13 **THE COURT:** Two months -- a month and --

14 **MR. PASCUZZI:** Yes.

15 **THE COURT:** All right. Well, you know, I can't hold
16 the train up.

17 **MR. PASCUZZI:** No, understood.

18 **THE COURT:** So what are you proposing we do?

19 **MR. TROY:** Your Honor, Matthew Troy, Department of
20 Justice, Civil Division, on behalf of the federal agencies with
21 claims here and the largest of which is FEMA.

22 And to go back to your question about what are your
23 claims, they are not tort claims for personal injury or
24 wrongful death. They're not even truly tort claims. We're not
25 victims. FEMA, pursuant to federal law and required by such,

1 responded to a disaster and incurred expenses in the form of
2 direct financial assistance to public entities as well as to
3 individuals that are now seeking to recover. So simply seeking
4 to recover financial assistance in the form of response costs
5 mandated by law.

6 So that's why our claims --

7 **THE COURT:** I get it.

8 **MR. TROY:** So to get to your question, though, I think
9 what Mr. Pascuzzi laid out is correct. File the claims,
10 determine if they're unliquidated or not. If they are
11 liquidated, by law they're not subject to 502(c).

12 If some portion of them is deemed by Judge Montali to be
13 unliquidated, we simply wanted to point out to Your Honor right
14 here right now that we still think that our claims are
15 sufficiently distinct and unique from individual tort victims'
16 claims that they shouldn't be caught up in this estimation
17 proceeding. This estimation proceeding.

18 **THE COURT:** Oh, well, I think time alone will make you
19 on a different track. So, I mean, they're not even going to
20 know from Judge Montali until maybe first week of November.

21 **MR. ORSINI:** Well, I think that's their choice,
22 Your Honor. If the claims are, as they have been asserting,
23 liquidated already -- i.e., their worth of sum that's easily
24 ascertainable -- why can't they file their claims now; right?
25 It doesn't make any sense.

1 **THE COURT:** Well --

2 **MR. ORSINI:** They can file --

3 **THE COURT:** -- I'm not going to micromanage people's
4 claim filing, but --

5 **MR. ORSINI:** In any event, one other point --

6 **THE COURT:** The Court has set a deadline,
7 Judge Montali set a deadline of -- what was it? October?

8 **MR. PASCUZZI:** 21st.

9 **MR. TROY:** October 21st is the deadline to file proof
10 of claims.

11 **THE COURT:** I'm not going to effectively trump him and
12 set a new deadline. They can do the deadline that was set.
13 All I'm saying is, by the operation of the dates alone, they're
14 not going to be able to probably be ready should anything come
15 here. I don't even -- not even getting into the qualitative
16 differences among the claims. So we may have an ancillary
17 short -- I can't imagine it would be terribly complicated, but
18 maybe a short ancillary hearing in February, or something like
19 that, just to address the state.

20 **MR. ORSINI:** I think it's a little sufficient unto the
21 day. We'll see what the schedule looks like once they get
22 their claims in and Judge Montali decides the issue.

23 **THE COURT:** It may be a nonissue too. I mean, you may
24 work everything out, it may all be liquidated, and you may not
25 have to come back.

1 **MR. ORSINI:** And there will also be very important
2 legal issues that the Court can address before any hearings,
3 including the fact that FEMA doesn't actually have a cause of
4 action against PG&E. Those types of things we can address as
5 soon as the claims are actually submitted.

6 **THE COURT:** Okay.

7 All right. Is that good?

8 **MR. TROY:** Yes, Your Honor. Thank you.

9 **THE COURT:** So, in other words, we're just going to
10 see how it goes but I am presuming, subject to change, that
11 under your current schedule, you're probably not going to be
12 able to be on the same track anyway. Okay?

13 So I will leave the possibility of a short ancillary --
14 you know, I'm not saying "ancillary" in a way that they're
15 small, but -- "subsequent" is better -- a subsequent proceeding
16 if we need to do that. Okay?

17 **MR. TROY:** I understand, Your Honor. Thank you.

18 **THE COURT:** That's going to all depend on
19 Judge Montali's determination.

20 **MR. PASCUZZI:** Thank you, Your Honor.

21 **THE COURT:** Anything else for today?

22 **MR. ORSINI:** Nothing else from us, Your Honor. Thank
23 you.

24 **THE COURT:** All right. From anybody? Nothing?

25 (No response.)

(Proceedings adjourned at 10:52 a.m.)

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, September 10, 2019

G. A. Bryce

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter